IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 2836 of 2005

Between:

N. Gangadhar, S/o. Pulia, Assistant Commercial Tax Officer,
Bhanswada, Nizamabad District. R/o. Bhanswada.

..... PETITIONER

AND

1 The Commissioner of Commercial Taxes, Government of Andhra Pradesh,
M.J. Road, Hyderabad - 500 001.
2 The Deputy Commissioner of Commercial Taxes, Hyderabad Rural division,
Gagan
Vihar, 3rd Floor, M.J. Road, Hyderabad - 500 001.
3 The Deputy Commissioner of Commercial Taxes, Nizamabad Division, Near
Tilak
Garden Road, Nizamabad- 505 001.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction in the nature of Mandamus or otherwise declaring the Proceedings CCT's Ref.no. DX2/1103/95-1 dt. 24-1-2004 issued by the 1st respondent as arbitrary, illegal and unconstitutional, violating Articles 14, 16 and 21 of the Constitution of India, apart from ultra-virus to Rule 40(2) and Rule 40(5 and 5) of APCS (CCA) Rules, 1991 and set aside the same, including the orders of the Hon'ble Tribunal in O.A.NO. 989/2004 & batch dt. 3-2-2005, and issue consequential directions, directing the Respondents to forthwith reinstate the Petitioner into service, with all consequential benefits, in the interest of justice as otherwise the Petitioners will be put to irreparable loss and injury.

Counsel for the Petitioner: MR.P.V.KRISHNAIAH
Counsel for the Respondents: GP FOR SERVICES II

The Court made the following:

ORAL ORDER: (per GB. J.)

The Writ Petition is filed assailing the order passed by A.P. Administrative Tribunal (hereinafter referred to as the Tribunal) in O.A.No.989 of 2004 and batch, dated 3.2.2005.

2. The petitioner was working as Assistant Commercial Tax Officer. While so, a charge sheet was issued to four Assistant Commercial Tax Officers along with the petitioner alleging certain misconducts and ultimately punishment order was passed by the 2nd respondent-the Deputy Commercial Tax Officer, who is the competent authority, on 3.10.1996 imposing the punishment of deferment of two increments with cumulative effect. However, even before the expiry of appeal period, the Commissioner of Commercial Taxes initiated *suo motu* revisional proceedings on 13.12.1996 in respect of four employees. Aggrieved by the said *suo motu* revisional proceedings, all the four employees filed O.As., before the Tribunal. In respect of two O.As., filed by Narsiah and Madhusudhana Chari, the learned Tribunal set aside the proceedings initiated by the Commissioner of Commercial Taxes as it is in violation of C.C.A. Rules inasmuch as the proceedings could not have been initiated before the expiry of appeal period. However, it was left open to the authorities to issue a fresh show cause notice. It is the case of the petitioner that though the fresh show cause notice was issued to him, the Commissioner of Commercial Taxes confirmed the punishment of deferment of two increments with cumulative effect passed by the 2nd respondent in respect of other two employees. Challenging the show cause notice, the petitioner and one Mohd.Yousuf filed OA.No.6057 of 2003 and the learned Tribunal while disposing of the said OA., directed the petitioner herein to submit explanation, and in pursuance of the said direction, the petitioner filed an explanation, but ultimately the Commissioner of Commercial Taxes passed the order of dismissal dated 24.1.2004. Aggrieved by the said dismissal order, the petitioner herein filed OA.No.989 of 2004 unsuccessfully. Against the dismissal of OA.No.989 of 2004, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submits that the Tribunal in respect of two similarly situate employees set aside the show cause notice on the ground that it is in violation of APCS (CCA) Rules, and when the petitioner also stands on the same footing, the Tribunal ought to have held that the show cause notice itself is not maintainable, and when the show cause notice itself is not maintainable, the consequent punishment ought to have fall to the ground. Even the Tribunal taking into consideration this aspect found that since the petitioner had already filed explanation, the said issue cannot be re-agitated.

4. We have also heard the learned Government Pleader for Services-II.

5. Even though the show cause notice was set aside in respect of two other employees, yet in respect of the petitioner and another, the Tribunal disposed of the O.As., filed by them and directed them to submit explanation. Even then also the Commissioner of Commercial Taxes ought to have considered the matter dispassionately after allowing the O.As., by the Tribunal. Instead of doing so, the Commissioner of Commercial Taxes passed the order in respect of other two employees simply confirming the earlier order passed by the Deputy Commissioner of Commercial Taxes viz., deferment of two increments, but in respect of the petitioner the order of the original authority was modified and the order of dismissal was passed, which we find that it is not appropriate or in accordance with the Rules. When the same charges are framed and a joint enquiry was conducted against the four employees including the petitioner herein and even assuming that they are held proved, yet the punishment ought to be uniform, but discriminatory standards cannot be adopted.

6. Under these circumstances, we set aside the order of the Tribunal and remit the matter to the Commissioner of Commercial Taxes for fresh consideration. The Commissioner of Commercial Taxes shall pass the appropriate orders after hearing the parties concerned and taking into consideration the orders passed by him in respect of two similarly situate employees, in respect of whom the punishment as awarded by the original authority was confirmed. This exercise shall be done within a period of two (02) months from the date of receipt of a copy of this order.

7. Accordingly the Writ Petition is disposed of. No costs.

(G.BIKSHAPATHY, J.)

26th April, 2005.

(P.S.NARAYANA, J.)

SSR

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner of Commercial Taxes, Government of Andhra Pradesh, M.J. Road, Hyderabad - 500 001.
2 The Deputy Commissioner of Commercial Taxes, Hyderabad Rural division, Gagan
Vihar, 3rd Floor, M.J. Road, Hyderabad - 500 001.
3 The Deputy Commissioner of Commercial Taxes, Nizamabad Division, Near Tilak
Garden Road, Nizamabad- 505 001.

4 The Registrar, A.P. Administrative Tribunal, Hyderabad.

5 2 CCs to G.P. for Services-II, High Court of A.P. Hyderabad. (OUT)

6 2 CD copies

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